

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2314  
OFFERED BY MR. ABERCROMBIE OF HAWAII**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Native Hawaiian Gov-  
3 ernment Reorganization Act of 2009”.

**4 SEC. 2. FINDINGS.**

5       Congress finds that—

6           (1) the Constitution vests Congress with the au-  
7 thority to address the conditions of the indigenous,  
8 native people of the United States and the Supreme  
9 Court has held that under the Indian Commerce,  
10 Treaty, Supremacy, and Property Clauses, and the  
11 War Powers, Congress may exercise that power to  
12 rationally promote the welfare of the native peoples  
13 of the United States so long as the native people are  
14 a “distinctly native community”;

15           (2) Native Hawaiians, the native people of the  
16 Hawaiian archipelago that is now part of the United  
17 States, are 1 of the indigenous, native peoples of the

1 United States, and the Native Hawaiian people are  
2 a distinctly native community;

3 (3) the United States has a special political and  
4 legal relationship with, and has long enacted legisla-  
5 tion to promote the welfare of, the native peoples of  
6 the United States, including the Native Hawaiian  
7 people;

8 (4) under the authority of the Constitution, the  
9 United States concluded a number of treaties with  
10 the Kingdom of Hawaii, and from 1826 until 1893,  
11 the United States—

12 (A) recognized the sovereignty of the King-  
13 dom of Hawaii as a nation;

14 (B) accorded full diplomatic recognition to  
15 the Kingdom of Hawaii; and

16 (C) entered into treaties and conventions  
17 of peace, friendship, and commerce with the  
18 Kingdom of Hawaii to govern trade, commerce,  
19 and navigation in 1826, 1842, 1849, 1875, and  
20 1887;

21 (5) pursuant to the Hawaiian Homes Commis-  
22 sion Act, 1920 (42 Stat. 108, chapter 42), the  
23 United States set aside approximately 203,500 acres  
24 of land in trust to better address the conditions of  
25 Native Hawaiians in the Federal territory that later

1 became the State of Hawaii and in enacting the Ha-  
2 waiian Homes Commission Act, 1920, Congress ac-  
3 knowledged the Native Hawaiian people as a native  
4 people of the United States, as evidenced by the  
5 Committee Report, which notes that Congress relied  
6 on the Indian affairs power and the War Powers, in-  
7 cluding the power to make peace;

8 (6) by setting aside 203,500 acres of land in  
9 trust for Native Hawaiian homesteads and farms,  
10 the Hawaiian Homes Commission Act, 1920, assists  
11 the members of the Native Hawaiian community in  
12 maintaining distinctly native communities through-  
13 out the State of Hawaii;

14 (7) approximately 6,800 Native Hawaiian fami-  
15 lies reside on the Hawaiian Home Lands, and ap-  
16 proximately 18,000 Native Hawaiians who are eligi-  
17 ble to reside on the Hawaiian Home Lands are on  
18 a waiting list to receive assignments of Hawaiian  
19 Home Lands;

20 (8)(A) in 1959, as part of the compact with the  
21 United States admitting Hawaii into the Union,  
22 Congress delegated the authority and responsibility  
23 to administer the Hawaiian Homes Commission Act,  
24 1920, lands in trust for Native Hawaiians and es-  
25 tablished a new public trust (commonly known as

1 the “ceded lands trust”), for 5 purposes, 1 of which  
2 is the betterment of the conditions of Native Hawai-  
3 ians, and Congress thereby reaffirmed its recogni-  
4 tion of the Native Hawaiians as a distinctly native  
5 community with a direct lineal and historical succes-  
6 sion to the aboriginal, indigenous people of Hawaii;

7 (B) the public trust consists of lands, including  
8 submerged lands, natural resources, and the reve-  
9 nues derived from the lands; and

10 (C) the assets of this public trust have never  
11 been completely inventoried or segregated;

12 (9) Native Hawaiians have continuously sought  
13 access to the ceded lands in order to establish and  
14 maintain native settlements and distinct native com-  
15 munities throughout the State;

16 (10) the Hawaiian Home Lands and other  
17 ceded lands provide important native land reserves  
18 and resources for the Native Hawaiian community  
19 to maintain the practice of Native Hawaiian culture,  
20 language, and traditions, and for the continuity, sur-  
21 vival, and economic self-sufficiency of the Native  
22 Hawaiian people as a distinctly native political com-  
23 munity;

24 (11) Native Hawaiians continue to maintain  
25 other distinctly native areas in Hawaii, including na-

1       tive lands that date back to the ali'i and kuleana  
2       lands reserved under the Kingdom of Hawaii;

3               (12) through the Sovereign Council of Hawaiian  
4       Homelands Assembly, Native Hawaiian civic associa-  
5       tions, charitable trusts established by the Native Ha-  
6       waiian ali'i, nonprofit native service providers and  
7       other community associations, the Native Hawaiian  
8       people have actively maintained native traditions and  
9       customary usages throughout the Native Hawaiian  
10      community and the Federal and State courts have  
11      continuously recognized the right of the Native Ha-  
12      waiian people to engage in certain customary prac-  
13      tices and usages on public lands;

14              (13) on November 23, 1993, Public Law 103-  
15      150 (107 Stat. 1510) (commonly known as the  
16      “Apology Resolution”) was enacted into law, extend-  
17      ing an apology on behalf of the United States to the  
18      native people of Hawaii for the United States role  
19      in the overthrow of the Kingdom of Hawaii;

20              (14) the Apology Resolution acknowledges that  
21      the overthrow of the Kingdom of Hawaii occurred  
22      with the active participation of agents and citizens  
23      of the United States, and further acknowledges that  
24      the Native Hawaiian people never directly relin-  
25      quished to the United States their claims to their in-

1 herent sovereignty as a people over their national  
2 lands, either through the Kingdom of Hawaii or  
3 through a plebiscite or referendum;

4 (15)(A) the Apology Resolution expresses the  
5 commitment of Congress and the President—

6 (i) to acknowledge the ramifications of the  
7 overthrow of the Kingdom of Hawaii; and

8 (ii) to support reconciliation efforts be-  
9 tween the United States and Native Hawaiians;

10 (B) Congress established the Office of Hawai-  
11 ian Relations within the Department of the Interior  
12 with 1 of its purposes being to consult with Native  
13 Hawaiians on the reconciliation process; and

14 (C) the United States has the duty to reconcile  
15 and reaffirm its friendship with the Native Hawaiian  
16 people because, among other things, the United  
17 States Minister and United States naval forces par-  
18 ticipated in the overthrow of the Kingdom of Ha-  
19 waii;

20 (16)(A) despite the overthrow of the Govern-  
21 ment of the Kingdom of Hawaii, Native Hawaiians  
22 have continued to maintain their separate identity as  
23 a single distinctly native political community  
24 through cultural, social, and political institutions,  
25 and to give expression to their rights as native peo-

1       ple to self-determination, self-governance, and eco-  
2       nomic self-sufficiency; and

3               (B) there is clear continuity between the ab-  
4       original, native citizens of the Kingdom of Hawaii  
5       and their successors, the Native Hawaiian people  
6       today;

7               (17) Native Hawaiians have also given expres-  
8       sion to their rights as native people to self-deter-  
9       mination, self-governance, and economic self-suffi-  
10      ciency—

11              (A) through the provision of governmental  
12      services to Native Hawaiians, including the pro-  
13      vision of—

14                      (i) health care services;

15                      (ii) educational programs;

16                      (iii) employment and training pro-  
17      grams;

18                      (iv) economic development assistance  
19      programs;

20                      (v) children's services;

21                      (vi) conservation programs;

22                      (vii) fish and wildlife protection;

23                      (viii) agricultural programs;

24                      (ix) native language immersion pro-  
25      grams;

1 (x) native language immersion schools  
2 from kindergarten through high school;

3 (xi) college and master's degree pro-  
4 grams in native language immersion in-  
5 struction; and

6 (xii) traditional justice programs; and

7 (B) by continuing their efforts to enhance  
8 Native Hawaiian self-determination and local  
9 control;

10 (18) Native Hawaiian people are actively en-  
11 gaged in Native Hawaiian cultural practices, tradi-  
12 tional agricultural methods, fishing and subsistence  
13 practices, maintenance of cultural use areas and sa-  
14 cred sites, protection of burial sites, and the exercise  
15 of their traditional rights to gather medicinal plants  
16 and herbs, and food sources;

17 (19) the Native Hawaiian people wish to pre-  
18 serve, develop, and transmit to future generations of  
19 Native Hawaiians their lands and Native Hawaiian  
20 political and cultural identity in accordance with  
21 their traditions, beliefs, customs and practices, lan-  
22 guage, and social and political institutions, to con-  
23 trol and manage their own lands, including ceded  
24 lands, and to achieve greater self-determination over  
25 their own affairs;

1           (20) this Act provides a process within the  
2           framework of Federal law for the Native Hawaiian  
3           people to exercise their inherent rights as a distinct,  
4           indigenous, native community to reorganize a single  
5           unified Native Hawaiian governing entity for the  
6           purpose of giving expression to their rights as a na-  
7           tive people to self-determination and self-governance;

8           (21) Congress—

9           (A) has declared that the United States  
10          has a special political and legal relationship for  
11          the welfare of the native peoples of the United  
12          States, including Native Hawaiians;

13          (B) has identified Native Hawaiians as an  
14          indigenous, distinctly native people of the  
15          United States within the scope of its authority  
16          under the Constitution, and has enacted scores  
17          of statutes on their behalf; and

18          (C) has delegated broad authority to the  
19          State of Hawaii to administer some of the  
20          United States' responsibilities as they relate to  
21          the Native Hawaiian people and their lands;

22          (22) the United States has recognized and re-  
23          affirmed the special political and legal relationship  
24          with the Native Hawaiian people through the enact-  
25          ment of the Act entitled, “An Act to provide for the

1 admission of the State of Hawaii into the Union”,  
2 approved March 18, 1959 (Public Law 86–3; 73  
3 Stat. 4), by—

4 (A) ceding to the State of Hawaii title to  
5 the public lands formerly held by the United  
6 States, and mandating that those lands be held  
7 as a public trust for 5 purposes, 1 of which is  
8 for the betterment of the conditions of Native  
9 Hawaiians; and

10 (B) transferring the United States respon-  
11 sibility for the administration of the Hawaiian  
12 Home Lands to the State of Hawaii, but retain-  
13 ing the exclusive right of the United States to  
14 consent to any actions affecting the lands in-  
15 cluded in the trust and any amendments to the  
16 Hawaiian Homes Commission Act, 1920 (42  
17 Stat. 108, chapter 42), that are enacted by the  
18 legislature of the State of Hawaii affecting the  
19 beneficiaries under the Act;

20 (23) the United States has continually recog-  
21 nized and reaffirmed that—

22 (A) Native Hawaiians have a direct genea-  
23 logical, cultural, historic, and land-based con-  
24 nection to their forebears, the aboriginal, indig-

1           enous, native people who exercised original sov-  
2           ereignty over the Hawaiian Islands;

3           (B) Native Hawaiians have never relin-  
4           quished their claims to sovereignty or their sov-  
5           ereign lands;

6           (C) the United States extends services to  
7           Native Hawaiians because of their unique sta-  
8           tus as the native people of a prior-sovereign na-  
9           tion with whom the United States has a special  
10          political and legal relationship; and

11          (D) the special relationship of American  
12          Indians, Alaska Natives, and Native Hawaiians  
13          to the United States arises out of their status  
14          as aboriginal, indigenous, native people of the  
15          United States; and

16          (24) the State of Hawaii supports the reaffir-  
17          mation of the special political and legal relationship  
18          between the Native Hawaiian governing entity and  
19          the United States, as evidenced by 2 unanimous res-  
20          olutions enacted by the Hawaii State Legislature in  
21          the 2000 and 2001 sessions of the Legislature and  
22          by the testimony of the Governor of the State of Ha-  
23          waii before the Committee on Indian Affairs of the  
24          Senate on February 25, 2003, and March 1, 2005.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) ABORIGINAL, INDIGENOUS, NATIVE PEO-  
4 PLE.—The term “aboriginal, indigenous, native peo-  
5 ple” means a people whom Congress has recognized  
6 as the original inhabitants of the lands that later be-  
7 came part of the United States and who exercised  
8 sovereignty in the areas that later became part of  
9 the United States.

10 (2) APOLOGY RESOLUTION.—The term “Apol-  
11 ogy Resolution” means Public Law 103–150 (107  
12 Stat. 1510), a Joint Resolution extending an apol-  
13 ogy to Native Hawaiians on behalf of the United  
14 States for the participation of agents of the United  
15 States in the January 17, 1893, overthrow of the  
16 Kingdom of Hawaii.

17 (3) COMMISSION.—The term “Commission”  
18 means the Commission established under section  
19 8(b).

20 (4) COUNCIL.—The term “Council” means the  
21 Native Hawaiian Interim Governing Council estab-  
22 lished under section 8(c)(2).

23 (5) INDIAN PROGRAM OR SERVICE.—

24 (A) IN GENERAL.—The term “Indian pro-  
25 gram or service” means any federally funded or  
26 authorized program or service provided to an

1 Indian tribe (or member of an Indian tribe) be-  
2 cause of the status of the members of the In-  
3 dian tribe as Indians.

4 (B) INCLUSIONS.—The term “Indian pro-  
5 gram or service” includes a program or service  
6 provided by the Bureau of Indian Affairs, the  
7 Indian Health Service, or any other Federal  
8 agency.

9 (6) INDIAN TRIBE.—The term “Indian tribe”  
10 has the meaning given the term in section 4 of the  
11 Indian Self-Determination and Education Assistance  
12 Act (25 U.S.C. 450b).

13 (7) INDIGENOUS, NATIVE PEOPLE.—The term  
14 “indigenous, native people” means the lineal de-  
15 scendants of the aboriginal, indigenous, native peo-  
16 ple of the United States.

17 (8) INTERAGENCY COORDINATING GROUP.—The  
18 term “Interagency Coordinating Group” means the  
19 Native Hawaiian Interagency Coordinating Group  
20 established under section 6.

21 (9) NATIVE HAWAIIAN GOVERNING ENTITY.—  
22 The term “Native Hawaiian governing entity”  
23 means the governing entity organized pursuant to  
24 this Act by the qualified Native Hawaiian constitu-  
25 ents.

1           (10) NATIVE HAWAIIAN MEMBERSHIP ORGANI-  
2           ZATION.—The term “Native Hawaiian Membership  
3           Organization” means an organization that—

4                   (A) serves and represents the interests of  
5           Native Hawaiians, has as a primary and stated  
6           purpose for the provision of services to Native  
7           Hawaiians, and has expertise in Native Hawai-  
8           ian affairs;

9                   (B) has leaders who are elected democrat-  
10          ically, or selected through traditional Native  
11          leadership practices, by members of the Native  
12          Hawaiian community;

13                  (C) advances the cause of Native Hawai-  
14          ians culturally, socially, economically, or politi-  
15          cally;

16                  (D) is a membership organization or asso-  
17          ciation; and

18                  (E) has an accurate and reliable list of Na-  
19          tive Hawaiian members.

20          (11) OFFICE.—The term “Office” means the  
21          United States Office for Hawaiian Relations estab-  
22          lished by section 5(a).

23          (12) QUALIFIED NATIVE HAWAIIAN CON-  
24          STITUENT.—For the purposes of establishing the  
25          roll authorized under section 8, and prior to the rec-

1       ognition by the United States of the Native Hawai-  
2       ian governing entity, the term “qualified Native Ha-  
3       waiian constituent” means an individual who the  
4       Commission determines has satisfied the following  
5       criteria and who makes a written statement certi-  
6       fying that he or she—

7               (A) is—

8                   (i) an individual who is 1 of the indig-  
9                   enous, native people of Hawaii and who is  
10                  a direct lineal descendant of the aboriginal,  
11                  indigenous, native people who—

12                           (I) resided in the islands that  
13                           now comprise the State of Hawaii on  
14                           or before January 1, 1893; and

15                           (II) occupied and exercised sov-  
16                           ereignty in the Hawaiian archipelago,  
17                           including the area that now con-  
18                           stitutes the State of Hawaii; or

19                   (ii) an individual who is 1 of the in-  
20                   digenous, native people of Hawaii and who  
21                   was eligible in 1921 for the programs au-  
22                   thorized by the Hawaiian Homes Commis-  
23                   sion Act, 1920 (42 Stat. 108, chapter 42),  
24                   or a direct lineal descendant of that indi-  
25                   vidual;

1 (B) wishes to participate in the reorganiza-  
2 tion of the Native Hawaiian governing entity;

3 (C) is 18 years of age or older;

4 (D) is a citizen of the United States; and

5 (E) maintains a significant cultural, social,  
6 or civic connection to the Native Hawaiian com-  
7 munity, as evidenced by satisfying 2 or more of  
8 the following 10 criteria:

9 (i) Resides in the State of Hawaii.

10 (ii) Resides outside the State of Ha-  
11 waii and—

12 (I)(aa) currently serves or served  
13 as (or has a parent or spouse who  
14 currently serves or served as) a mem-  
15 ber of the Armed Forces or as an em-  
16 ployee of the Federal Government;  
17 and

18 (bb) resided in the State of Ha-  
19 waii prior to the time he or she (or  
20 such parent or spouse) left the State  
21 of Hawaii to serve as a member of the  
22 Armed Forces or as an employee of  
23 the Federal Government; or

24 (II)(aa) currently is or was en-  
25 rolled (or has a parent or spouse who

1 currently is or was enrolled) in an ac-  
2 credited institution of higher edu-  
3 cation outside the State of Hawaii;  
4 and

5 (bb) resided in the State of Ha-  
6 waii prior to the time he or she (or  
7 such parent or spouse) left the State  
8 of Hawaii to attend such institution.

9 (iii)(I) Is or was eligible to be a bene-  
10 ficiary of the programs authorized by the  
11 Hawaiian Homes Commission Act, 1920  
12 (42 Stat. 108, chapter 42), and resides or  
13 resided on land set aside as “Hawaiian  
14 home lands”, as defined in such Act; or

15 (II) Is a child or grandchild of an in-  
16 dividual who is or was eligible to be a ben-  
17 eficiary of the programs authorized by  
18 such Act and who resides or resided on  
19 land set aside as “Hawaiian home lands”,  
20 as defined in such Act.

21 (iv) Is or was eligible to be a bene-  
22 ficiary of the programs authorized by the  
23 Hawaiian Homes Commission Act, 1920  
24 (42 Stat. 108, chapter 42).

1 (v) Is a child or grandchild of an indi-  
2 vidual who is or was eligible to be a bene-  
3 ficiary of the programs authorized by the  
4 Hawaiian Homes Commission Act, 1920  
5 (42 Stat. 108, chapter 42).

6 (vi) Resides on or has an ownership  
7 interest in, or has a parent or grandparent  
8 who resides on or has an ownership inter-  
9 est in, “kuleana land” that is owned in  
10 whole or in part by a person who, accord-  
11 ing to a genealogy verification by the Of-  
12 fice of Hawaiian Affairs or by court order,  
13 is a lineal descendant of the person or per-  
14 sons who received the original title to such  
15 “kuleana land”, defined as lands granted  
16 to native tenants pursuant to Haw. L.  
17 1850, p. 202, titled “An Act Confirming  
18 Certain Resolutions of the King and Privy  
19 Council Passed on the 21st day of Decem-  
20 ber, A.D. 1849, Granting to the Common  
21 People Allodial Titles for Their Own Lands  
22 and House Lots, and Certain Other Privi-  
23 leges”, as amended by Haw. L. 1851, p.  
24 98, titled “An Act to Amend An Act  
25 Granting to the Common People Allodial

1 Titles for Their Own Lands and House  
2 Lots, and Certain Other Privileges” and as  
3 further amended by any subsequent legis-  
4 lation.

5 (vii) Is, or is the child or grandchild  
6 of, an individual who has been or was a  
7 student for at least 1 school year at a  
8 school or program taught through the me-  
9 dium of the Hawaiian language under sec-  
10 tion 302H–6, Hawaii Revised Statutes, or  
11 at a school founded and operated primarily  
12 or exclusively for the benefit of Native Ha-  
13 waiians.

14 (viii) Has been a member since Sep-  
15 tember 30, 2009, of at least 1 Native Ha-  
16 waiian Membership Organization.

17 (ix) Has been a member since Sep-  
18 tember 30, 2009, of at least 2 Native Ha-  
19 waiian Membership Organizations.

20 (x) Is regarded as Native Hawaiian  
21 and whose mother or father is (or if de-  
22 ceased, was) regarded as Native Hawaiian  
23 by the Native Hawaiian community, as evi-  
24 denced by sworn affidavits from two or  
25 more qualified Native Hawaiian constitu-

1           ents certified by the Commission as pos-  
2           sessing expertise in the social, cultural,  
3           and civic affairs of the Native Hawaiian  
4           community.

5           (13) SECRETARY.—The term “Secretary”  
6           means the Secretary of the Interior.

7           (14) SPECIAL POLITICAL AND LEGAL RELA-  
8           TIONSHIP.—The term “special political and legal re-  
9           lationship” shall refer, except where differences are  
10          specifically indicated elsewhere in the Act, to the  
11          type of and nature of relationship the United States  
12          has with the several federally recognized Indian  
13          tribes.

14 **SEC. 4. UNITED STATES POLICY AND PURPOSE.**

15          (a) POLICY.—The United States reaffirms that—

16               (1) Native Hawaiians are a unique and distinct,  
17               indigenous, native people with whom the United  
18               States has a special political and legal relationship;

19               (2) the United States has a special political and  
20               legal relationship with the Native Hawaiian people,  
21               which includes promoting the welfare of Native Ha-  
22               waiians;

23               (3)(A) Congress possesses and hereby exercises  
24               the authority under the Constitution, including but  
25               not limited to Article I, Section 8, Clause 3, to enact

1 legislation to better the conditions of Native Hawai-  
2 ians and has exercised this authority through the en-  
3 actment of—

4 (i) the Hawaiian Homes Commission Act,  
5 1920 (42 Stat. 108, chapter 42);

6 (ii) the Act entitled “An Act to provide for  
7 the admission of the State of Hawaii into the  
8 Union”, approved March 18, 1959 (Public Law  
9 86–3; 73 Stat. 4); and

10 (iii) more than 150 other Federal laws ad-  
11 dressing the conditions of Native Hawaiians;

12 (B) other sources of authority under the  
13 Constitution for legislation on behalf of native  
14 peoples of the United States, including Native  
15 Hawaiians, include but are not limited to the  
16 Property, Treaty, and Supremacy Clauses, War  
17 Powers, and the Fourteenth Amendment, and  
18 Congress hereby relies on those powers in en-  
19 acting this legislation; and

20 (C) the Constitution’s original Apportion-  
21 ment Clause and the 14th Amendment Citizen-  
22 ship and amended Apportionment Clauses also  
23 acknowledge the propriety of legislation on be-  
24 half of the native peoples of the United States,  
25 including Native Hawaiians;

1 (4) Native Hawaiians have—

2 (A) an inherent right to autonomy in their  
3 internal affairs;

4 (B) an inherent right of self-determination  
5 and self-governance;

6 (C) the right to reorganize a Native Ha-  
7 waiian governing entity; and

8 (D) the right to become economically self-  
9 sufficient; and

10 (5) the United States shall continue to engage  
11 in a process of reconciliation and political relations  
12 with the Native Hawaiian people.

13 (b) PURPOSE.—The purpose of this Act is to provide  
14 a process for the reorganization of the single Native Ha-  
15 waiian governing entity and the reaffirmation of the spe-  
16 cial political and legal relationship between the United  
17 States and that Native Hawaiian governing entity for pur-  
18 poses of continuing a government-to-government relation-  
19 ship.

20 **SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RE-**  
21 **LATIONS.**

22 (a) ESTABLISHMENT.—There is established within  
23 the Office of the Secretary the United States Office for  
24 Native Hawaiian Relations.

25 (b) DUTIES.—The Office shall—

1           (1) continue the process of reconciliation with  
2           the Native Hawaiian people in furtherance of the  
3           Apology Resolution;

4           (2) upon the reaffirmation of the government-  
5           to-government relationship between the single Native  
6           Hawaiian governing entity and the United States,  
7           effectuate and coordinate the special political and  
8           legal relationship between the Native Hawaiian gov-  
9           erning entity and the United States through the  
10          Secretary, and with all other Federal agencies;

11          (3) provide timely notice to, and consult with,  
12          the Native Hawaiian governing entity before taking  
13          any actions that may have the potential to signifi-  
14          cantly affect Native Hawaiian resources, rights, or  
15          lands;

16          (4) work with the Interagency Coordinating  
17          Group, other Federal agencies, and the State of Ha-  
18          wahi on policies, practices, and proposed actions af-  
19          fecting Native Hawaiian resources, rights, or lands;  
20          and

21          (5) prepare and submit to the Committee on  
22          Indian Affairs and the Committee on Energy and  
23          Natural Resources of the Senate and the Committee  
24          on Natural Resources of the House of Representa-  
25          tives an annual report detailing the activities of the

1 Interagency Coordinating Group that are under-  
2 taken with respect to the continuing process of rec-  
3 onciliation and to effect meaningful consultation  
4 with the Native Hawaiian governing entity and may  
5 provide recommendations for any necessary changes  
6 to Federal law or regulations promulgated under the  
7 authority of Federal law.

8 (c) APPLICABILITY TO DEPARTMENT OF DE-  
9 FENSE.—This section shall have no applicability to the  
10 Department of Defense or to any agency or component  
11 of the Department of Defense, but the Secretary of De-  
12 fense may designate 1 or more officials as liaison to the  
13 Office.

14 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING**  
15 **GROUP.**

16 (a) ESTABLISHMENT.—In recognition that Federal  
17 programs authorized to address the conditions of Native  
18 Hawaiians are largely administered by Federal agencies  
19 other than the Department of the Interior, there is estab-  
20 lished an interagency coordinating group, to be known as  
21 the “Native Hawaiian Interagency Coordinating Group”.

22 (b) COMPOSITION.—The Interagency Coordinating  
23 Group shall be composed of officials, to be designated by  
24 the President, from—

1           (1) each Federal agency whose actions may sig-  
2           nificantly or uniquely impact Native Hawaiian pro-  
3           grams, resources, rights, or lands; and

4           (2) the Office.

5           (c) LEAD AGENCY.—

6           (1) IN GENERAL.—The Department of the Inte-  
7           rior and the White House Office of Intergovern-  
8           mental Affairs shall serve as the leaders of the  
9           Interagency Coordinating Group.

10          (2) MEETINGS.—The Secretary shall convene  
11          meetings of the Interagency Coordinating Group.

12          (d) DUTIES.—The Interagency Coordinating Group  
13          shall—

14               (1) coordinate Federal programs and policies  
15               that affect Native Hawaiians or actions by any agen-  
16               cy or agencies of the Federal Government that may  
17               significantly or uniquely affect Native Hawaiian re-  
18               sources, rights, or lands;

19               (2) consult with the Native Hawaiian governing  
20               entity, through the coordination referred to in para-  
21               graph (1), but the consultation obligation established  
22               in this provision shall apply only after the satisfac-  
23               tion of all of the conditions referred to in section  
24               8(c)(8); and

1           (3) ensure the participation of each Federal  
2           agency in the development of the report to Congress  
3           authorized in section 5(b)(5).

4           (e) **APPLICABILITY TO DEPARTMENT OF DE-**  
5 **FENSE.**—This section shall have no applicability to the  
6 Department of Defense or to any agency or component  
7 of the Department of Defense, but the Secretary of De-  
8 fense may designate 1 or more officials as liaison to the  
9 Interagency Coordinating Group.

10 **SEC. 7. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**  
11 **RESENTATIVE.**

12           The Attorney General shall designate an appropriate  
13 official within the Department of Justice to assist the Of-  
14 fice in the implementation and protection of the rights of  
15 Native Hawaiians and their political and legal relationship  
16 with the United States, and upon the recognition of the  
17 Native Hawaiian governing entity as provided for in sec-  
18 tion 8, in the implementation and protection of the rights  
19 of the Native Hawaiian governing entity and its political  
20 and legal relationship with the United States.

1 **SEC. 8. PROCESS FOR REORGANIZATION OF NATIVE HA-**  
2 **WAIAN GOVERNING ENTITY AND REAFFIR-**  
3 **MATION OF SPECIAL POLITICAL AND LEGAL**  
4 **RELATIONSHIP BETWEEN UNITED STATES**  
5 **AND NATIVE HAWAIIAN GOVERNING ENTITY.**

6 (a) RECOGNITION OF NATIVE HAWAIIAN GOVERNING  
7 ENTITY.—The right of the qualified Native Hawaiian con-  
8 stituents to reorganize the single Native Hawaiian gov-  
9 erning entity to provide for their common welfare and to  
10 adopt appropriate organic governing documents is recog-  
11 nized by the United States.

12 (b) COMMISSION.—

13 (1) IN GENERAL.—There is authorized to be es-  
14 tablished a Commission to be composed of 9 mem-  
15 bers for the purposes of—

16 (A) preparing and maintaining a roll of  
17 qualified Native Hawaiian constituents; and

18 (B) certifying that the individuals on the  
19 roll of qualified Native Hawaiian constituents  
20 meet the definition of qualified Native Hawai-  
21 ian constituent set forth in section 3.

22 (2) MEMBERSHIP.—

23 (A) APPOINTMENT.—

24 (i) IN GENERAL.—Not later than 180  
25 days after the date of enactment of this  
26 Act, the Secretary shall appoint the mem-

1           bers of the Commission in accordance with  
2           subparagraph (B).

3                   (ii) CONSIDERATION.—In making an  
4           appointment under clause (i), the Sec-  
5           retary may take into consideration a rec-  
6           ommendation made by any Native Hawai-  
7           ian Membership Organization.

8                   (B) REQUIREMENTS.—Each member of  
9           the Commission shall demonstrate, as deter-  
10          mined by the Secretary—

11                   (i) not less than 10 years of experi-  
12          ence in the study and determination of Na-  
13          tive Hawaiian genealogy (traditional cul-  
14          tural experience shall be given due consid-  
15          eration); and

16                   (ii) an ability to read and translate  
17          into English documents written in the Ha-  
18          waiian language.

19                   (C) VACANCIES.—A vacancy on the Com-  
20          mission—

21                   (i) shall not affect the powers of the  
22          Commission; and

23                   (ii) shall be filled in the same manner  
24          as the original appointment.

1           (3) EXPENSES.—Each member of the Commis-  
2           sion shall be allowed travel expenses, including per  
3           diem in lieu of subsistence, at rates authorized for  
4           employees of agencies under subchapter I of chapter  
5           57 of title 5, United States Code, while away from  
6           their homes or regular places of business in the per-  
7           formance of services for the Commission.

8           (4) DUTIES.—The Commission shall—

9                   (A) prepare and maintain a roll of quali-  
10                  fied Native Hawaiian constituents as set forth  
11                  in subsection (c); and

12                   (B) certify that the individuals on the roll  
13                  of qualified Native Hawaiian constituents meet  
14                  the definition of that term as set forth in sec-  
15                  tion 3.

16           (5) STAFF.—

17                   (A) IN GENERAL.—The Commission may,  
18                  without regard to the civil service laws (includ-  
19                  ing regulations), appoint and terminate an execu-  
20                  tive director and such other additional per-  
21                  sonnel as are necessary to enable the Commis-  
22                  sion to perform the duties of the Commission.

23                   (B) COMPENSATION.—

24                           (i) IN GENERAL.—Except as provided  
25                           in clause (ii), the Commission may fix the

1 compensation of the executive director and  
2 other personnel without regard to the pro-  
3 visions of chapter 51 and subchapter III of  
4 chapter 53 of title 5, United States Code,  
5 relating to classification of positions and  
6 General Schedule pay rates.

7 (ii) MAXIMUM RATE OF PAY.—The  
8 rate of pay for the executive director and  
9 other personnel shall not exceed the rate  
10 payable for level V of the Executive Sched-  
11 ule under section 5316 of title 5, United  
12 States Code.

13 (6) DETAIL OF FEDERAL GOVERNMENT EM-  
14 PLOYEES.—

15 (A) IN GENERAL.—An employee of the  
16 Federal Government may be detailed to the  
17 Commission without reimbursement.

18 (B) CIVIL SERVICE STATUS.—The detail of  
19 the employee shall be without interruption or  
20 loss of civil service status or privilege.

21 (7) PROCUREMENT OF TEMPORARY AND INTER-  
22 MITTENT SERVICES.—The Commission may procure  
23 temporary and intermittent services in accordance  
24 with section 3109(b) of title 5, United States Code,  
25 at rates for individuals that do not exceed the daily

1 equivalent of the annual rate of basic pay prescribed  
2 for level V of the Executive Schedule under section  
3 5316 of that title.

4 (8) EXPIRATION.—The Secretary shall dissolve  
5 the Commission upon the reaffirmation of the spe-  
6 cial political and legal relationship between the Na-  
7 tive Hawaiian governing entity and the United  
8 States.

9 (c) PROCESS FOR REORGANIZATION OF NATIVE HA-  
10 WAIAN GOVERNING ENTITY.—

11 (1) ROLL.—

12 (A) CONTENTS.—The roll shall include the  
13 names of the qualified Native Hawaiian con-  
14 stituents who are certified by the Commission  
15 to be qualified Native Hawaiian constituents, as  
16 defined in section 3.

17 (B) FORMATION OF ROLL.—Each indi-  
18 vidual claiming to be a qualified Native Hawai-  
19 ian constituent shall submit to the Commission  
20 documentation in the form established by the  
21 Commission that is sufficient to enable the  
22 Commission to determine whether the individual  
23 meets the definition set forth in section 3; pro-  
24 vided that an individual presenting evidence  
25 that he or she satisfies the definition in section

1           2 of Public Law 103–150 shall be presumed to  
2           meet the requirement of section 3(12)(A)(i).

3           (C) DOCUMENTATION.—The Commission  
4           shall—

5                   (i)(I) identify the types of documenta-  
6                   tion that may be submitted to the Commis-  
7                   sion that would enable the Commission to  
8                   determine whether an individual meets the  
9                   definition of qualified Native Hawaiian  
10                  constituent set forth in section 3;

11                   (II) recognize an individual’s identi-  
12                   fication of lineal ancestors on the 1890  
13                   Census by the Kingdom of Hawaii as a re-  
14                   liable indicia of lineal descent from the ab-  
15                   original, indigenous, native people who, on  
16                   or before January 1, 1893, resided in the  
17                   islands that now compromise the State of  
18                   Hawaii; and

19                   (III) permit elderly Native Hawaiians  
20                   and other qualified Native Hawaiian con-  
21                   stituents lacking birth certificates or other  
22                   documentation due to birth on Hawaiian  
23                   Home Lands or other similar cir-  
24                   cumstances to establish lineal descent by

1                   sworn affidavits from 2 or more qualified  
2                   Native Hawaiian constituents;

3                   (ii) establish a standard format for  
4                   the submission of documentation and a  
5                   process to ensure veracity; and

6                   (iii) publish information related to  
7                   clauses (i) and (ii) in the Federal Register.

8                   (D) CONSULTATION.—In making deter-  
9                   minations that each individual proposed for in-  
10                  clusion on the roll of qualified Native Hawaiian  
11                  constituents meets the definition of qualified  
12                  Native Hawaiian constituent in section 3, the  
13                  Commission may consult with bona fide Native  
14                  Hawaiian Membership Organizations, agencies  
15                  of the State of Hawaii including but not limited  
16                  to the Department of Hawaiian Home Lands,  
17                  the Office of Hawaiian Affairs, and the State  
18                  Department of Health, and other entities with  
19                  expertise and experience in the determination of  
20                  Native Hawaiian ancestry and lineal  
21                  descendancy.

22                  (E) NOTIFICATION.—The Commission  
23                  shall—

1 (i) inform an individual whether they  
2 have been deemed by the Commission a  
3 qualified Native Hawaiian constituent; and

4 (ii) inform an individual of a right to  
5 appeal the decision if deemed not to be a  
6 qualified Native Hawaiian constituent.

7 (F) CERTIFICATION AND SUBMITTAL OF  
8 ROLL TO SECRETARY.—The Commission  
9 shall—

10 (i) submit the roll containing the  
11 names of those individuals who meet the  
12 definition of qualified Native Hawaiian  
13 constituent in section 3 to the Secretary  
14 within 2 years from the date on which the  
15 Commission is fully composed; and

16 (ii) certify to the Secretary that each  
17 of the qualified Native Hawaiian constitu-  
18 ents proposed for inclusion on the roll  
19 meets the definition set forth in section 3.

20 (G) PUBLICATION.—Upon certification by  
21 the Commission to the Secretary that those list-  
22 ed on the roll meet the definition of qualified  
23 Native Hawaiian constituent set forth in section  
24 3, the Commission shall publish the notice of  
25 the certification of the roll in the Federal Reg-

1           ister, notwithstanding pending appeals pursuant  
2           to subparagraph (H).

3           (H) APPEAL.—The Secretary, in consulta-  
4           tion with the Commission, shall establish a  
5           mechanism for an administrative appeal for any  
6           person whose name is excluded from the roll  
7           who claims to meet the definition of qualified  
8           Native Hawaiian constituent in section 3.

9           (I) PUBLICATION; UPDATE.—The Commis-  
10          sion shall—

11           (i) publish the notice of the certifi-  
12          cation of the roll regardless of whether ap-  
13          peals are pending;

14           (ii) update the roll and provide notice  
15          of the updated roll on the final disposition  
16          of any appeal;

17           (iii) update the roll to include any  
18          person who has been certified by the Com-  
19          mission as meeting the definition of quali-  
20          fied Native Hawaiian constituent in section  
21          3 after the initial publication of the roll or  
22          after any subsequent publications of the  
23          roll; and

24           (iv) provide a copy of the roll and any  
25          updated rolls to the Council.

1           (J) EFFECT OF PUBLICATION.—The publi-  
2 cation of the initial and updated roll shall serve  
3 as the basis for the eligibility of qualified Na-  
4 tive Hawaiian constituents whose names are  
5 listed on those rolls to participate in the reorga-  
6 nization of the Native Hawaiian governing enti-  
7 ty.

8           (2) ORGANIZATION OF COUNCIL.—

9           (A) ORGANIZATION.—The Commission, in  
10 consultation with the Secretary, shall hold a  
11 minimum of 3 meetings and each meeting shall  
12 be at least 2 working days of the qualified Na-  
13 tive Hawaiian constituents listed on the roll es-  
14 tablished under this section—

15                   (i) to develop criteria for candidates  
16 to be elected to serve on the Council;

17                   (ii) to determine the structure of the  
18 Council, including the number of Council  
19 members; and

20                   (iii) to elect members from individuals  
21 listed on the roll established under this  
22 subsection to the Council.

23           (B) POWERS.—

24                   (i) IN GENERAL.—The Council—

1 (I) shall represent those listed on  
2 the roll established under this section  
3 in the implementation of this Act; and

4 (II) shall have no powers other  
5 than powers given to the Council  
6 under this Act.

7 (ii) FUNDING.—The Council may  
8 enter into a contract with, or obtain a  
9 grant from, any Federal or State agency to  
10 carry out clause (iii).

11 (iii) ACTIVITIES.—

12 (I) IN GENERAL.—The Council  
13 shall conduct, among the qualified  
14 Native Hawaiian constituents listed  
15 on the roll established under this sub-  
16 section, a referendum for the purpose  
17 of determining the proposed elements  
18 of the organic governing documents of  
19 the Native Hawaiian governing entity,  
20 including but not limited to—

21 (aa) the proposed criteria  
22 for future membership in the Na-  
23 tive Hawaiian governing entity;

24 (bb) the proposed powers  
25 and authorities to be exercised by

1 the Native Hawaiian governing  
2 entity, as well as the proposed  
3 privileges and immunities of the  
4 Native Hawaiian governing enti-  
5 ty;

6 (cc) the proposed civil rights  
7 and protection of the rights of  
8 the citizens of the Native Hawai-  
9 ian governing entity and all per-  
10 sons affected by the exercise of  
11 governmental powers and au-  
12 thorities of the Native Hawaiian  
13 governing entity; and

14 (dd) other issues determined  
15 appropriate by the Council.

16 (II) DEVELOPMENT OF ORGANIC  
17 GOVERNING DOCUMENTS.—Based on  
18 the referendum, the Council shall de-  
19 velop proposed organic governing doc-  
20 uments for the Native Hawaiian gov-  
21 erning entity and may seek technical  
22 assistance from the Secretary on the  
23 draft organic governing documents to  
24 ensure that the draft organic gov-

1           erning documents comply with this  
2           Act and other Federal law.

3                   (III) DISTRIBUTION.—The Coun-  
4           cil shall publish to all qualified Native  
5           Hawaiian constituents of the Native  
6           Hawaiian governing entity listed on  
7           the roll published under this sub-  
8           section notice of the availability of—

9                   (aa) a copy of the proposed  
10          organic governing documents, as  
11          drafted by the Council; and

12                   (bb) a brief impartial de-  
13          scription of the proposed organic  
14          governing documents.

15                   (IV) ELECTIONS.—

16                   (aa) IN GENERAL.—Not  
17          sooner than 180 days after the  
18          proposed organic governing docu-  
19          ments are drafted and distrib-  
20          uted, the Council, with the assist-  
21          ance of the Secretary, shall hold  
22          elections for the purpose of rati-  
23          fying the proposed organic gov-  
24          erning documents.

1 (bb) PURPOSE.—The Coun-  
2 cil, with the assistance of the  
3 Secretary, shall hold the election  
4 for the purpose of ratifying the  
5 proposed organic governing docu-  
6 ments 60 days after publishing  
7 notice of an election.

8 (cc) OFFICERS.—On certifi-  
9 cation of the organic governing  
10 documents by the Secretary in  
11 accordance with paragraph (4),  
12 the Council, with the assistance  
13 of the Secretary, shall hold elec-  
14 tions of the officers of the Native  
15 Hawaiian governing entity pursu-  
16 ant to paragraph (5).

17 (3) SUBMITTAL OF ORGANIC GOVERNING DOCU-  
18 MENTS.—Following the reorganization of the Native  
19 Hawaiian governing entity and the adoption of or-  
20 ganic governing documents, the Council shall submit  
21 the organic governing documents of the Native Ha-  
22 waiian governing entity to the Secretary.

23 (4) CERTIFICATIONS.—

24 (A) IN GENERAL.—Within the context of  
25 the future negotiations to be conducted under

1           the authority of section 9(b)(1), and the subse-  
2           quent actions by the Congress and the State of  
3           Hawaii to enact legislation to implement the  
4           agreements of the 3 governments, not later  
5           than 180 days, which may be extended an addi-  
6           tional 90 days if the Secretary deems necessary,  
7           after the date on which the Council submits the  
8           organic governing documents to the Secretary,  
9           the Secretary shall certify or decline to certify  
10          that the organic governing documents—

11                   (i) establish the criteria for member-  
12                   ship in the Native Hawaiian governing en-  
13                   tity;

14                   (ii) were adopted by a majority vote of  
15                   those qualified Native Hawaiian constitu-  
16                   ents whose names are listed on the roll  
17                   published by the Secretary and who voted  
18                   in the election;

19                   (iii) provide authority for the Native  
20                   Hawaiian governing entity to negotiate  
21                   with Federal, State, and local govern-  
22                   ments, and other entities;

23                   (iv) provide for the exercise of inher-  
24                   ent and other appropriate governmental

1 authorities by the Native Hawaiian gov-  
2 erning entity;

3 (v) prevent the sale, disposition, lease,  
4 or encumbrance of lands, interests in  
5 lands, or other assets of the Native Hawai-  
6 ian governing entity without the consent of  
7 the Native Hawaiian governing entity;

8 (vi) provide for the protection of the  
9 civil rights of the citizens of the Native  
10 Hawaiian governing entity and all persons  
11 affected by the exercise of governmental  
12 powers and authorities by the Native Ha-  
13 waiian governing entity; and

14 (vii) are consistent with applicable  
15 Federal law.

16 (B) RESUBMISSION IN CASE OF NON-  
17 COMPLIANCE.—

18 (i) RESUBMISSION BY THE SEC-  
19 RETARY.—If the Secretary determines that  
20 the organic governing documents, or any  
21 part of the documents, do not meet all of  
22 the requirements set forth in subparagraph  
23 (A), the Secretary shall resubmit the or-  
24 ganic governing documents to the Council,  
25 along with a justification for each of the

1 Secretary's findings as to why the provi-  
2 sions are not in full compliance.

3 (ii) AMENDMENT AND RESUBMISSION  
4 OF ORGANIC GOVERNING DOCUMENTS.—If  
5 the organic governing documents are re-  
6 submitted to the Council by the Secretary  
7 under clause (i), the Council shall—

8 (I) amend the organic governing  
9 documents to ensure that the docu-  
10 ments meet all the requirements set  
11 forth in subparagraph (A); and

12 (II) resubmit the amended or-  
13 ganic governing documents to the Sec-  
14 retary for certification in accordance  
15 with this paragraph.

16 (C) CERTIFICATIONS DEEMED MADE.—  
17 The certifications under this paragraph shall be  
18 deemed to have been made if the Secretary has  
19 not acted within 180 days after the date on  
20 which the Council has submitted the organic  
21 governing documents of the Native Hawaiian  
22 governing entity to the Secretary.

23 (5) ELECTIONS.—On completion of the certifi-  
24 cations by the Secretary under paragraph (4), the  
25 Council, with the assistance of the Secretary, shall

1 hold elections of the officers of the Native Hawaiian  
2 governing entity.

3 (6) PROVISION OF ROLL.—The Council shall  
4 provide a copy of the roll of qualified Native Hawai-  
5 ian constituents to the governing body of the Native  
6 Hawaiian governing entity.

7 (7) TERMINATION.—The Council shall cease to  
8 exist and shall have no power or authority under  
9 this Act after the officers of the governing body who  
10 are elected as provided in paragraph (5) are in-  
11 stalled.

12 (8) REAFFIRMATION.—Notwithstanding any  
13 other provision of law, the special political and legal  
14 relationship between the United States and the Na-  
15 tive Hawaiian people is hereby reaffirmed and the  
16 United States extends Federal recognition to the  
17 Native Hawaiian governing entity as the representa-  
18 tive sovereign governing body of the Native Hawai-  
19 ian people after—

20 (A) the approval of the organic governing  
21 documents by the Secretary under subpara-  
22 graph (A) or (C) of paragraph (4); and

23 (B) the officers of the Native Hawaiian  
24 governing entity elected under paragraph (5)  
25 have been installed.

1 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**  
2 **THORITY TO STATE OF HAWAII; NEGOTIA-**  
3 **TIONS; CLAIMS.**

4 (a) REAFFIRMATION.—The delegation by the United  
5 States of authority to the State of Hawaii to address the  
6 conditions of the indigenous, native people of Hawaii con-  
7 tained in the Act entitled “An Act to provide for the ad-  
8 mission of the State of Hawaii into the Union”, approved  
9 March 18, 1959 (Public Law 86–3; 73 Stat. 4), is re-  
10 affirmed.

11 (b) NEGOTIATIONS.—

12 (1) IN GENERAL.—Upon the reaffirmation of  
13 the special political and legal relationship between  
14 the United States and the Native Hawaiian gov-  
15 erning entity, the United States and the State of  
16 Hawaii may enter into negotiations with the Native  
17 Hawaiian governing entity designed to lead to an  
18 agreement addressing such matters as—

19 (A) the transfer of State of Hawaii lands  
20 and surplus Federal lands, natural resources,  
21 and other assets, and the protection of existing  
22 rights related to such lands or resources;

23 (B) the exercise of governmental authority  
24 over any transferred lands, natural resources,  
25 and other assets, including land use;

1 (C) the exercise of civil and criminal juris-  
2 diction;

3 (D) the exercise of other powers and au-  
4 thorities that are recognized by the United  
5 States as powers and authorities typically exer-  
6 cised by governments representing indigenous,  
7 native people of the United States;

8 (E) any residual responsibilities of the  
9 United States and the State of Hawaii; and

10 (F) grievances regarding assertions of his-  
11 torical wrongs committed against Native Ha-  
12 waiians by the United States or by the State of  
13 Hawaii.

14 (2) AMENDMENTS TO EXISTING LAWS.—Upon  
15 agreement on any matter or matters negotiated with  
16 the United States or the State of Hawaii, and the  
17 Native Hawaiian governing entity, the parties may  
18 submit—

19 (A) to the Committee on Indian Affairs of  
20 the Senate, the Committee on Energy and Nat-  
21 ural Resources of the Senate, and the Com-  
22 mittee on Natural Resources of the House of  
23 Representatives recommendations for proposed  
24 amendments to Federal law that will enable the

1 implementation of agreements reached between  
2 the governments; and

3 (B) to the Governor and the legislature of  
4 the State of Hawaii, recommendations for pro-  
5 posed amendments to State law that will enable  
6 the implementation of agreements reached be-  
7 tween the governments.

8 (3) GOVERNMENTAL AUTHORITY AND  
9 POWER.—The Native Hawaiian governing entity  
10 shall be vested with the inherent powers and privi-  
11 leges of self-government of a native government  
12 under existing law, except as set forth in section  
13 10(a). Said powers and privileges may be modified  
14 by agreement between the Native Hawaiian gov-  
15 erning entity, the United States, and the State pur-  
16 suant to paragraph (1), subject to the limit de-  
17 scribed by section 10(a). Unless so agreed, nothing  
18 in this Act shall preempt Federal or State authority  
19 over Native Hawaiians or their property under exist-  
20 ing law or authorize the State to tax or regulate the  
21 Native Hawaiian governing entity.

22 (4) MEMBERSHIP.—Once the United States ex-  
23 tends Federal recognition to the Native Hawaiian  
24 governing entity, the United States will recognize  
25 and affirm the Native Hawaiian governing entity's

1 inherent power and authority to determine its own  
2 membership criteria, to determine its own member-  
3 ship, and to grant, deny, revoke, or qualify member-  
4 ship without regard to whether any person was or  
5 was not deemed to be a qualified Native Hawaiian  
6 constituent under this Act.

7 (c) CLAIMS.—Nothing in this Act—

8 (1) alters existing law, including case law, re-  
9 garding obligations of the United States or the State  
10 of Hawaii relating to events or actions that occurred  
11 prior to recognition of the Native Hawaiian gov-  
12 erning entity;

13 (2) creates, enlarges, revives, modifies, dimin-  
14 ishes, extinguishes, waives, or otherwise alters any  
15 claim or cause of action against the United States  
16 or its officers or the State of Hawaii or its officers,  
17 or any defense (including the defense of statute of  
18 limitations) to any such claim or cause of action; or

19 (3) amends section 2409a of title 28, United  
20 States Code (commonly known as the “Quiet Title  
21 Act”), chapter 171 of title 28, United States Code  
22 (commonly known as the “Federal Tort Claims  
23 Act”), section 1491 of title 28, United States Code  
24 (commonly known as the “Tucker Act”), section  
25 1505 of title 28, United States Code (commonly

1 known as the “Indian Tucker Act”), the Hawaii Or-  
2 ganic Act (31 Stat. 141), or any other Federal stat-  
3 ute, except as expressly amended by this Act.

4 **SEC. 10. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

5 (a) INDIAN GAMING REGULATORY ACT.—

6 (1) IN GENERAL.—The Native Hawaiian gov-  
7 erning entity and Native Hawaiians may not con-  
8 duct gaming activities as a matter of claimed inher-  
9 ent authority or under the authority of any Federal  
10 law, including the Indian Gaming Regulatory Act  
11 (25 U.S.C. 2701 et seq.) or under any regulations  
12 thereunder promulgated by the Secretary or the Na-  
13 tional Indian Gaming Commission.

14 (2) APPLICABILITY.—The prohibition contained  
15 in paragraph (1) regarding the use of Indian Gam-  
16 ing Regulatory Act (25 U.S.C. 2701 et seq.) and in-  
17 herent authority to game applies regardless of  
18 whether gaming by Native Hawaiians or the Native  
19 Hawaiian governing entity would be located on land  
20 within the State of Hawaii or within any other State  
21 or territory of the United States.

22 (b) SINGLE GOVERNING ENTITY.—This Act will re-  
23 sult in the recognition of the single Native Hawaiian gov-  
24 erning entity. Additional Native Hawaiian groups shall not  
25 be eligible for acknowledgment pursuant to the Federal

1 Acknowledgment Process set forth in part 83 of title 25,  
2 Code of Federal Regulations, or any other administrative  
3 acknowledgment or recognition process.

4 (c) INDIAN CIVIL RIGHTS ACT OF 1968.—The Coun-  
5 cil and the subsequent governing entity recognized under  
6 this Act shall be an Indian tribe, as defined in section 201  
7 of the Indian Civil Rights Act of 1968 (25 U.S.C. 1301)  
8 for purposes of sections 201 through 203 of that Act (25  
9 U.S.C. 1301–1303).

10 (d) INDIAN PROGRAMS, SERVICES, AND LAWS.—

11 (1) IN GENERAL.—Notwithstanding any other  
12 provision of this Act, nothing in this Act extends eli-  
13 gibility for any Indian program or service to the Na-  
14 tive Hawaiian governing entity or its members un-  
15 less a statute governing such a program or service  
16 expressly provides that Native Hawaiians or the Na-  
17 tive Hawaiian governing entity is eligible for such  
18 program or service. Nothing in this Act affects the  
19 eligibility of any person for any program or service  
20 under any statute or law in effect before the date of  
21 enactment of this Act.

22 (2) APPLICABILITY OF OTHER TERMS.—In Fed-  
23 eral statutes or regulations in force prior to the  
24 United States recognition of the Native Hawaiian  
25 governing entity, the terms “Indian” and “Native

1 American”, and references to Indian tribes, bands,  
2 nations, pueblos, villages, or other organized groups  
3 or communities, shall not apply to the Native Ha-  
4 waiian governing entity or its members, unless the  
5 Federal statute or regulation expressly applies to  
6 Native Hawaiians or the Native Hawaiian governing  
7 entity.

8 (e) REAL PROPERTY TRANSFERS.—Section 2116 of  
9 the Revised Statutes (commonly known as the “Indian  
10 Trade and Intercourse Act”; 25 U.S.C. 177) does not  
11 apply to any purchase, grant, lease, or other conveyance  
12 of lands, or of any title or claim thereto, from Native Ha-  
13 waiians, Native Hawaiian entities, or the Kingdom of Ha-  
14 waii that occurred prior to the date of the United States’  
15 recognition of the Native Hawaiian governing entity.

16 **SEC. 11. SEVERABILITY.**

17 If any section or provision of this Act is held invalid,  
18 it is the intent of Congress that the remaining sections  
19 or provisions shall continue in full force and effect.

20 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

21 There are authorized to be appropriated such sums  
22 as are necessary to carry out this Act.

